

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

September 9, 2002

**RESPONSIBLE STAFF:**

Jennifer Russel, Director  
Planning and Code Administration

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
X	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	7/17/02
	7/24/02
Hearing Date	8/5/02
Record Held Open	Indefinitely
Policy Discussion	

**TITLE:**

Text Amendments T-351, T-352 and T-353.

**SUPPORTING BACKGROUND:**

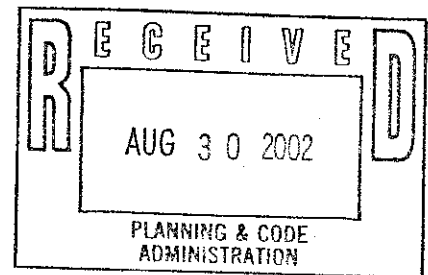
On August 5, 2002, the Planning Commission and the Mayor and Council held a series of joint public hearings on the above-noted text amendments. These text amendments were focused on establishing definitions for a series of uses previously unidentified in the zoning ordinance and to separate out uses that are permitted by right and by special exception in the MXD Zone. There were numerous comments during the course of the public hearings relative to the content of the ordinance. A copy of the transcript is enclosed as a reminder of the issues raised.

City Attorney Abrams has reviewed the issues discussed during the public hearing and has made changes to the ordinances that he has deemed appropriate. A cover memo outlining these changes is enclosed (Exhibit #14), as well as redlined versions of T-351 and T-352 highlighting the changes. There were no changes proposed for T-353 by Mr. Abrams. Staff will present the revised ordinances.

All of the ordinances must first return to the Planning Commission for a recommendation to be sent to the Mayor and Council, after which they will be scheduled for policy discussion and guidance.


**DESIRED OUTCOME:**

Provide guidance to staff.



## MEMORANDUM

TO: Jennifer Russel, Director  
Planning and Code Administration

FROM: Stanley D. Abrams, City Attorney 

SUBJECT: Text Amendments T-351, T-352, T-353/ Second Draft

DATE: August 28, 2002



I have reviewed the public hearing transcript of the above referenced text amendments and have made revisions based upon certain comments made at the hearing. Other comments or suggestions which I did not believe were necessary or appropriate have not been included in this second draft. As an example, I have made no revisions to T-353 since I am not in agreement with Mr. Arkin's comments at the public hearing.

Below are descriptions of the revisions to the first two (2) text amendments and an explanation for my position on the third text amendment. Enclosed are both red-lined and a clean copy incorporating the revised language.

### T-351

Within §24-1 (Definitions) I have revised the definitions as follows:

- (1) Within the definition of *adult oriented establishment* I have deleted the phrase "a significant or substantial portion of stock in trade" and substituted a specific floor area standard of ten percent (10%). This is consistent with the Montgomery County provisions. Within this use definition I have also added the words "exhibition" and "display".
- (2) Within the definition of *amusement center* I clarified that copy centers and business equipment sales establishments are not amusement centers.
- (3) Within the definition of *body-piercing establishment* I have exempted from this definition the practice of any licensed medical professional, religious organization and jewelry stores and jewelry departments in general merchandise establishments.

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MAYOR  
Sidney A. Katz

COUNCIL MEMBERS  
Stanley J. Alster  
Geraldine E. Edens  
Henry F. Marraffa, Jr.  
John B. Schlichting  
Ann T. Somerset

CITY MANAGER  
David B. Humpton

**T-352**

Within §24-136B(6)(a) I have expanded the requirements for adult oriented businesses to include:

- (1) The display and exhibition; and
- (2) An additional requirement is added for a separate enclosure or room separating the adult materials from other general sales areas and requiring signage to identify the adult content of the area for establishments which do not qualify as an adult oriented use because the materials of this nature occupy less than 10% of the total floor area.

Within §24-136B(6)(c) I have revised how the 1000' foot distance to certain protected uses is to be calculated from using the front entrance of the adult business to utilizing the "nearest point of the boundary of the property upon which the business is located". To the same effect I have added revisions to §24-136A(9), §24-143(6) and on §24-144(c).

**T-353**

I do not agree with Mr. Arkin's comments that in American zoning law "anything which is lawful which is not prohibited is permitted". What is lawful within a particular zone is that which is permitted by right or by special exception. This is the traditional way that zoning ordinances are developed. Otherwise, an obnoxious use such as a rendering plant could be located within a residential zone merely because that use is not addressed or listed in the zoning ordinance. Any use which is not listed as either a permitted use or special exception use in the zoning ordinance can be considered for inclusion by amendment to the zoning ordinance. Obviously zoning ordinances do not include every conceivable type of use of property otherwise the table of uses might be endless. Mr. Arkin also suggests that within §24.22(c) the sentence "Lawful accessory uses and lawful non-conforming uses are not prohibited uses." creates a large loophole. I am not sure what he is referring to but can unequivocally state but that sentence is basically a restatement of the existing law of this state.

Should you have any questions with respect to these revisions, please do not hesitate to contact me.

Redline



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE I, ENTITLED, "IN GENERAL" SECTION 24-1, ENTITLED "DEFINITIONS" SO AS TO AMEND THE DEFINITION OF AMUSEMENT CENTER, TO INCLUDE CERTAIN TYPES OF INTERNET CAFES, AND TO PROVIDE DEFINITIONS FOR TATTOO PARLOR AND ADULT ORIENTED BUSINESSES AND BODY PIERCING ESTABLISHMENTS TO AMEND ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES", DIVISION 12 ENTITLED "C-2 ZONE, GENERAL COMMERCIAL" SECTION 24-118(7), SO AS TO AMEND REGULATIONS FOR AMUSEMENT CENTERS AS TO HOURS OF OPERATION AND INCLUSION OF REQUIREMENT FOR CERTAIN INTERNET CAFES AND AMEND DIVISION 19 ENTITLED "MXD ZONE, MIXED USE DEVELOPMENT, SECTION 24-160D.3 COMMERCIAL/EMPLOYMENT/INDUSTRIAL SO AS TO REQUIRE SPECIAL EXCEPTION APPROVAL OF USES DESIGNATED AS SPECIAL EXCEPTIONS IN THE R-B, C-B, C-1, C-2, E-1 AND I-3 ZONES AND FURTHER TO PROHIBIT TATTOO PARLORS, PAWNSHOPS, ADULT ORIENTED BUSINESSES, BODY PIERCING ESTABLISHMENTS AND OPIATE ADDICTION TREATMENT FACILITIES IN THE MXD ZONE.

#### Text Amendment No. T-351

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article I, Section 24-1, Article III, Section 24-118(7) and Section 160 D.3(b) of the City Code be and they are hereby amended as follows:

#### ARTICLE I. IN GENERAL

##### Sec. 24-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

\* \* \* \* \*

Adult-oriented establishment- An establishment which, for money or any other form of consideration devotes more than ten percent of the total floor area [a significant or substantial portion of stock in trade], to the sale, exhibition, display, exchange, rental, loan, trade, transfer of one or more of the following: 1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual

representations or sexually-oriented paraphernalia or novelty items which are characterized by an emphasis upon the depiction, description or reproduction of specified sexual activities or specified anatomical areas; or 2) instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities; or (3) features nude adult entertainment performances.

\* \* \* \* \*

*Amusement center:* A commercially operated indoor facility containing more than three (3) coin - operated or fee paid amusement devices or computers suitable for participation for a fee by people of all ages, including but not limited to television games, electronic or mechanical novelty games, electromechanical and electronic target games, pinball machines, small kiddie rides and other similar devices, whether operated as a primary or accessory use. Internet cafes and similar establishments containing more than three (3) computers where patrons for a fee may play games on a computer shall be deemed to be an amusement center subject to the standards contained in Section 24-118(7) of this Chapter. Pool tables and billiard tables are not amusement devices and copy centers or business equipment sales establishments are not amusement centers.

\* \* \* \* \*

*Body-piercing establishment -* An establishment in which a fee is charged or a barter system is used for the act of penetrating the skin to make a hole, mark, or scar, generally permanent in nature on the body of a person. Body piercing does not include the use of a mechanized, pre-sterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both. Body piercing establishment does not include the practice of any licensed medical professional, religious organization or jewelry store or jewelry department of a general merchandise establishment which provides ear piercing as an accessory service to the sale of jewelry.

\* \* \* \* \*

*Tattoo parlor-* An establishment which offers or practices the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

\* \* \* \* \*

### ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES.

\* \* \* \* \*

## DIVISION 12. C-2 ZONE, GENERAL COMMERCIAL

\* \* \* \* \*

### Sec. 24-118. Uses permitted as special exceptions.

The following uses are permitted in the C-2 Zone as special exceptions after approval by the board of appeals in accordance with the provisions of section 24-189, or by the city council in accord with section 24-167A(c) as to subparagraph (9) below:

\* \* \* \* \*

(7) Amusement center, whether operated separately or in conjunction with any other permitted or special exception use, subject to the following regulations:

- |     |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|
| (a) | * | * | * | * | * | * |
| (b) | * | * | * | * | * | * |
| (c) | * | * | * | * | * | * |
| (d) | * | * | * | * | * | * |
| (e) | * | * | * | * | * | * |
| (f) | * | * | * | * | * | * |
| (g) | * | * | * | * | * | * |
| (h) | * | * | * | * | * | * |
| (i) | * | * | * | * | * | * |
| (j) | * | * | * | * | * | * |

(k) The board of appeals shall set such conditions it deems necessary and desirable; provided however the board shall not approve hours of operation to extend beyond 12:00 o'clock midnight.

- |     |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|
| (l) | * | * | * | * | * | * |
| (m) | * | * | * | * | * | * |

\* \* \* \* \*

(n) Any internet café defined as an amusement center existing on the effective date of this ordinance shall have a period of one hundred eighty (180) days from September 1, 2002 to apply for special exception approval as an amusement center. Any establishment failing to make application for approval after the expiration of such one hundred eighty (180)

days shall not be deemed to be a lawful non-conforming use and shall be prohibited until such special exception approval is granted.

\* \* \* \* \*

## DIVISION 19. MXD ZONE, MIXED USE DEVELOPMENTS

\* \* \* \* \*

### Sec. 24-160 D.3. Uses permitted.

\* \* \* \* \*

(b) *Commercial/employment/industrials.* All uses allowed by right [or by special exception] in the R-B, C-B, C-1, C-2, C-3, E-1 and I-3 Zones are permitted uses. All uses allowed by special exception the R-B, C-B, C-1, C-2, C-3, E-1, E-2 and I-3. Zones shall be special exception uses in the MXD Zone and subject to approval by the City Board of Appeals<sup>1</sup>. Designation of a use as a special exception in any of the zones listed herein shall mean the use is a special exception in the MXD Zone, notwithstanding the fact that such use may be allowed as a permitted use in any other zone referred to in this subsection (b). [except] The following uses [which] are specifically prohibited:

Manufacture, compounding, and processing of goods or articles.

Adult oriented business

Body piercing establishments

Pawnshops

Drive-in theaters.

Tattoo parlor

Opiate addiction treatment facilities

Automobile paint and body repair shops.

- (1) The approximate location and general type of commercial, employment and industrial uses proposed on the site must be shown on sketch plan and schematic development plan submitted in accord with section 24-160D.9 and Article V, with the level of specificity increasing at each level of plans review.
- (2) In order to establish an appropriately mixed character within the entire MXD zoned area, the following percentages of floor area proposed on site as shown

---

<sup>1</sup> Amusement centers in the MXD Zone shall not be required to comply with the standard of subsections (1), (2) and (3) of Section 24-144(a) of this Code.

on a sketch plan shall not exceed:

Retail commercial.....	60%
Employment/office.....	65%
Other commercial/institutional.....	15%

Individual percentages may be exceeded by approval of the city council upon application by an applicant and for good cause shown; provided, however, the cumulative total of all categories shall not exceed one hundred (100) percent.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2002 by the City Council of Gaithersburg, Maryland.

Delivered to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Approved by the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
SIDNEY KATZ, Mayor  
and President of the City Council

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2002 and the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2002. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
DAVID B. HUMPTON, City Manager



Redline



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE) ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES" DIVISION 14 ENTITLED "I-1 ZONE, LIGHT INDUSTRIAL", SECTION 24-136 ENTITLED "USES PERMITTED BY RIGHT AND SECTION 136A ENTITLED "SPECIAL EXCEPTION USES" AND DIVISION 15 ENTITLED "I-3 ZONE, INDUSTRIAL AND OFFICE PARK" SECTION 24-143 ENTITLED "USES PERMITTED BY RIGHT" AND SECTION 24-144 ENTITLED "USES PERMITTED AS SPECIAL EXCEPTIONS" TO PROVIDE FOR REQUIREMENTS APPLICABLE TO ADULT ORIENTED BUSINESSES, TATTOO PARLORS AND BODY PIERCING ESTABLISHMENTS.

**Text Amendment No. T-352**

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 24, Article III, Sections 24-136, 24-136A, 24-143 and 24-144 of the City Code and they are hereby amended as follows:

**ARTICLE III. REGULATIONS APPLICABLE TO PARTICULAR ZONES.**

\* \* \* \* \*

**DIVISION 14. I-1 ZONE, LIGHT INDUSTRIAL**

\* \* \* \* \*

**Sec. 24-136. Uses permitted by right.**

The following uses are permitted by right in the I-1 Zone:

\* \* \* \* \*

**B. CULTURAL, ENTERTAINMENT AND RECREATIONAL:**

\* \* \* \* \*

**(6). Adult oriented businesses subject to the following requirements:**

- (a) Goods, merchandise, materials displayed, exhibited, sold, rented or bartered or live performances must not be visible from outside the establishment. Any establishment devoting less than ten percent (10%)**

of its total floor area to adult oriented materials defined in Section 24-1 must be located within an enclosed room or area, separated from the general retail sales areas with appropriate signage identifying the adult content of the room or area.

- (b) Access must be prohibited to any person under the age of 21 years.
- (c) The business must be located at least one (1000) thousand feet away from any property: (i) located in a residential zone or (ii) on which a school, library, park, playground, recreational facility, daycare center or where as other adult oriented business is located. The distance must be measured in a straight line from the nearest point of the boundary of the property upon which the business is located front entrance of the adult oriented business to the nearest point of a boundary line to the uses described in subsection (6)(c)(i) and )(ii) hereinabove.
- (d) The business may operate only between the hours of 9:00 am and 9:00 pm.

\* \* \* \* \*

#### **Sec. 24-136 A. Special exception uses.**

\* \* \* \* \*

(9) Tattoo parlors and body piercing establishments subject to the following requirements in addition to other requirements generally for approving special exceptions and compliance with conditions imposed by the City Board of Appeals:

- (a) The business premises must not be located on property where the boundaries of the property are within one thousand (1000) feet of the boundaries of property containing a school, church, religious facility or other tattoo parlor or body piercing establishment or any residentially zoned property including property in the MXD Zone.
- (b) The business premises may only operate between the hours of 9:00 am and 9:00 pm.
- (c) The business must conform to any applicable state and local health and safety regulations.

- (d) No instruments or equipment shall be used which has not been sterilized for use on any customer or client.

\* \* \* \* \*

## DIVISION 15, I-3 ZONE. INDUSTRIAL AND OFFICE PARK

### Sec. 24-143. Uses permitted by right.

\* \* \* \* \*

- (6). Adult oriented businesses subject to the following requirements:

- (a) Goods, merchandise, materials sold, rented or bartered or live performances must not be visible from outside the establishment.
- (b) Access must be prohibited to any person under the age of 21 years.
- (c) The business must be located on property where the boundary of the property is at least 1000 feet away from any property (i) located in a residential zone or (ii) on which a school, library, park, playground, recreational facility, daycare center or where any other adult oriented business is located. The distance must be measured in a straight line from the front entrance of the adult oriented business to the nearest point of a boundary line to the uses described in subsection (6)(c)(i) and (ii) hereinabove.
- (d) The business may operate only between the hours of 9:00 am and 9:00 pm.

\* \* \* \* \*

### Sec. 24-144. Uses permitted as special exceptions.

The following uses are permitted in the I-3 Zone as special exceptions after approval by the board of appeals:

- (a) Amusement center \* \* \* \* \*

(a) \* \* \* \* \*

(b) \* \* \* \* \*

(c) \* \* \* \* \*

[(a)](b) Pawn shops, provided that a pawn shop is not located within one thousand (1000) feet of the boundaries of property containing a school, churches, religious facilities, or any other pawnshop or any residentially zoned property, including property in the MXD Zone designated on an approved schematic development plan or sketch plan for residential use, and said use shall comply with the requirements of Chapter 44A, Montgomery County Code as amended. Pawnshops existing as of the effective date of this amendment shall conform to the provisions of section 24-167C(2) of the City Code.

(c) Tattoo parlors and body piercing establishments subject to the following requirements in addition to other requirements generally for approving special exceptions and compliance with conditions imposed by the City Board:

- (1) The business premises must not be located on property where the boundary of the property is located within one thousand (1000) feet of the boundaries of property containing a school, church, religious facility or other tattoo parlor or body piercing establishment or any residentially zoned property including property in the MXD Zone.
- (2) The business premises may only operate between the hours of 9:00 am and 9:00 pm.
- (3) The business must conform to any applicable state and local health and safety regulations.
- (4) No instruments or equipment shall be used which has not been sterilized for use on any customer or client.

\* \* \* \* \*

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2002 by the City Council of Gaithersburg, Maryland.

Delivered to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Approved by the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
SIDNEY KATZ, Mayor  
and President of the City Council

THIS IS TO CERTIFY that the foregoing Ordinance  
was adopted by the City Council of Gaithersburg,  
in public meeting assembled, on the \_\_\_\_ day of  
\_\_\_\_\_, 2002 and the same was approved  
by the Mayor of the City of Gaithersburg on the  
\_\_\_\_ day of \_\_\_\_\_, 2002. This  
Ordinance will become effective on the \_\_\_\_ day  
of \_\_\_\_\_, 2002.

\_\_\_\_\_  
DAVID B. HUMPTON, City Manager

C:\WP51\City of Gaithersburg\Text Amendments\T-352 - Regulations Applicable to Particular Zones.-redlined draft 2.wpd

TRANSCRIPT OF  
JOINT PUBLIC HEARINGS

ON

**T-351** - Application Requests an Amendment to Chapter 24 of the City Code (City Zoning Ordinance) Article I, Entitled, "In General," §24-1 Entitled, "Definitions," so as to Amend the Definition of Amusement Center, to Include Certain Types of Internet Cafes, and to Provide Definitions for Tattoo Parlor and Adult-Oriented Businesses and Body Piercing Establishments; to Amend Article III, Entitled, "Regulations Applicable to Particular Zones," Division 12 Entitled, "C-2 Zone, General Commercial," §24-118(7), so as to Amend Regulations for Amusement Centers as to Hours of Operation and Inclusion of Requirement for Certain Internet Cafes, and Amend Division 19, Entitled, "MXD Zone, Mixed Use Development," §24-160D.3 Commercial/Employment/Industrial so as to Require Special Exception Approval of Uses Designated as Special Exceptions in the R-B, C-B, C-1, C-2, E-1 And I-3 Zones and Further to Prohibit Tattoo Parlors, Pawnshops, Adult-Oriented Businesses, Body Piercing Establishments, and Opiate Addiction Treatment Facilities in the MXD Zone

**T-352** - Application Requests an Amendment to Chapter 24 of the City Code (City Zoning Ordinance), Article III, Entitled, "Regulations Applicable to Particular Zones," Division 14, Entitled "I-1 Zone, Light Industrial," §24-136 Entitled, "Uses Permitted by Right," and §24-136A Entitled, "Special Exception Uses," and Division 15, Entitled, "I-3 Zone, Industrial and Office Park," §24-143 Entitled, "Uses Permitted by Right," and §24-144 Entitled, "Uses Permitted as Special Exceptions," to Provide for Requirements Applicable to Adult-Oriented Businesses, Tattoo Parlors, and Body Piercing Establishments

**T-353** - Application Requests an Amendment to Chapter 24 of the City Code (City Zoning Ordinance), Article III, Entitled, "Regulations Applicable to Particular Zones," Division 1A, Entitled, "Generally," §24-22 so as to More Definitely State the Status of Land Uses Permitted and Prohibited in Each Zoning District and Further to Retitle Subsection (b) to Apply to the R-6 Zone

BEFORE THE  
CITY OF GAITHERSBURG  
MAYOR AND CITY COUNCIL  
AND  
PLANNING COMMISSION

ON

August 5, 2002

Transcribed by  
Doris R. Stokes  
August, 2002



PARTICIPANTS

CITY COUNCIL

Mayor Katz  
Council Vice President Edens  
Council Member Alster  
Council Member Marraffa  
Council Member Schilchting  
Council Member Somerset

PLANNING COMMISSION

Vice Chair Bauer  
Commissioner Levy  
Commissioner Winborne

CITY MANAGER

David B. Humpton

CITY ATTORNEY

Stanley D. Abrams

STAFF

Planning and Code Administration Director Russel

OTHER SPEAKERS

*Chantal Preuninger, 4 Sanders Court*  
*Richard Arkin, 121 Selby Street*

Katz           The next item on our agenda is going to be public hearings. I would like to invite the Planning Commission to please come forward and join us. All of our public hearings tonight are joint public hearings and we have three of them. I believe Jennifer is going to do all three public hearings this evening?

Russel        That's right.

Katz           So it's the Jennifer Russel show. If you can begin please.

Russel        This is a public hearing on T-351. The hearing has been duly advertised in the *Gaithersburg Gazette* on July 17 and 24, 2002. At the present time there are ten exhibits in the record file. These exhibits are reference in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning and Code Administration Office during regular business hours at City Hall. Any objections to any receipt of any exhibit should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. T-351, T-352, and T-353 all relate to one another. Of course I will be introducing them all individually. T-351 is a housekeeping text amendment to deal with the fact that at the present time all uses permitted by right and by special exception in many zones are permitted out right, by right in the MXD zone. The amendment before you this evening will separate out uses that are permitted by right or by special exception in the MXD zone. All uses that are allowed by special exception in a variety of zones which are listed will no longer be permitted by right. The uses will be allowed by special exception only in the MXD zone only and consequently subjected to a public hearing by the Board of Appeals. The amendment does a few other things while we are at it. It adds the following uses to the list of prohibited uses in the MXD zone: adult-oriented businesses, body piercing establishments, pawn shops, tattoo parlors, and opiate addiction facilities. And defines within the context of the ordinance for the first time, adult-oriented



establishments, body piercing establishments and tattoo parlors. And I will refrain from reading these definitions. I am assuming that everyone has read them. Even though the Assistant City Manager really wants me to read them out loud, but I won't.

Katz And that would be Fred Felton, not to be confused with the other Assistant City Manager. Please go ahead.

Russel Moving right along. In addition, the less entertaining part of the text amendment, defines amusements center, modifies that existing definition to include establishments that have computers. By this change in the definition, internet cafes with more than three computers would fall within the definition of an amusement center. Additionally, the amendment would prohibit the Board of Appeals from approving hours of operation for an amusement center to extend beyond midnight and has a further caveat that requires any existing internet café to apply for special exception approval as amusement centers would become a special exception within six month of September 1, 2002, as the new amusement center is defined. So that pretty much covers the changes in this text amendment which relates to T-352 and T-353. Staff is suggesting that the Planning Commission hold their record open for a two-day period to allow for a recommendation to made a their upcoming meeting on the 7<sup>th</sup> of August, given that they only have one meeting this month. And subsequent to that have the Mayor and City Council hold their record open for a period of nine days so it can be dealt with at your next meeting.

Katz Thank you very much. Any questions of Jennifer?

Bauer Just a quick clarification. If there are three computers and something else, is that an internet café or does it have to say, state for itself that it is an internet cafes and then three or more computers makes it an amusement

center or whatever you called it. I am trying to see how you back into the definition of an internet café because it is (inaudible).

Russel Well it says internet cafes and similar establishments. So I think it brings all of them in. Anything that has more than three computers under this definition.

Bauer Some how I am trying to separate that from a copy center that has three or more computers. I trying to figure out how you are distinguishing?

Russel Well, it says where patrons for a fee may play games on a computer.

Katz That is not dissimilar from our amusement center definition that we had in the past?

Russel No. It is an addition to it.

Katz Right. It is an addition to it.

Russel The underlying language in addition to it. I mean it is really describing an internet café. But it doesn't do anything to the existing definition of the amusement center. It doesn't change anything.

Katz Ok. Any other questions?

Levy Within these three documents, it is clear that adult establishments, body piercing parlors are allowed in the I-1 and I-3 zones, but are pawn shops and opiate addiction centers allowed in anywhere else in the City?

Russel No.

Levy So this effectively gets rid of those from the City?

Russel Well, let me do all three of them and see.

Levy Ok. Well should I do my other two questions?

Russel Tattoo parlors.....

Levy Tattoo parlors, body piercing parlors, and adult establishments are allowed in I-1 and I-3.

Edens Only by special exception.

Levy Right. So they are not banned from the City.

Russel Right. That's the whole point that we are not trying to ban them from the City.

Katz I don't know that we are allowed to ban them from the City.

Levy So the other two are allowed somewhere else, in the City by special exception?

Russel I think in the I-3.

Katz We will double check that while the record is open, because that is a very important question.

Levy Ok. And then with the definition with of adult-orient establishment. What makes up significant or substantial portion of stock and trade and is that defined somewhere in the City Code?

Katz Perhaps Mr. Abrams will need to answer that.

- Abrams Stan Abrams City Attorney. Keeping with brevity the answer is no. You can if you desire put a percentage of the total stock. The problem is, the question is whether the percentage applies to each videotape, book, other paraphernalia and what happens when you mix all three of those and other types of goods for sale. The county I believe does have a percentage which it attaches to it.
- Levy Percentage of items or percentage of income. I was wondering what percentage of total income would make more....
- Abrams No, I think it is the percentage of stock and trade.
- Levy Ok.
- Abrams But I'm not sure how they figure what the percentage is?
- Katz Stan, let me ask you. Do you feel, obviously you helped write this, but you feel comfortable that we should leave, that we could leave the definition to be fairly flexible so that if there is a concern? My concern is that if we do strictly a percentage then someone can say then that you say ten percent and I'm only at 9-1/2 percent, but if there is a problem, then there is a problem.
- Abrams It gives you more latitude if you leave it the way it is. It is easier to defend if there is a specific number in it. And I guess you are sought of at cross purposes here. Because you may want the situation where you do have the latitude, but at the same time you don't want it vulnerable to .....
- Katz Well then perhaps we should look at whether we should put in a specific percentage.

Russel I looked through the zone and pawn shops are permitted as a special exception in the I-3 zone at present.

Levy And the opiate addiction center, are they in that same zone?

Russel I'm still checking.

Levy The other thing that I'm curious about is whether we should be allowing a business to come in that features nude, adult entertainment performances. I know we put serious restrictions in these ordinances by saying it could only be 9 a.m. to 9 p.m., but most of the places downtown are open to like four in the morning, not that I've been there to check. But I'm just wondering if we are opening ourselves open to the possibility of someone coming in to do this kind of business.

Katz If we can please ask Mr. Abrams to please come back up. Do we have the authority to, I'm asking, but I believe we do not? Do we have the authority to completely ban something from the City?

Abrams If it is constitutionally protected in some fashion, the answer is no. If it is not constitutionally protected, in other words you are not violating somebody's freedom of speech which deals with basically the adult entertainment or adult-oriented uses. I think you can, yes.

Levy Wasn't there a Supreme Court case a few years ago that said nude dancing is not protected speech.

Abrams I frankly don't recall.

Edens Can we accomplish the same thing through the special exception mechanism. Everyone gets their day and hearing before the Mayor and Council.

Abrams      Well the problem with the first amendment cases and it was really brought to bear by a case over in Prince George's County that went through the Fourth Circuit Court of Appeals, and their opinion was if you place a requirement that you go through a special exception process that you are prejudging in terms of the constitutional effect on that particular establishment as to whether its in violation or not. So the county which use to have a special exception requirement for those types of uses, now has sought of shoveled them off to lead a special exception requirement and put them in something like the heavy industrial zone. And that is similar to what Prince George's County has done.

Edens        By right.

Abrams      By right yes. Because you don't get involved with the special exception question no matter which zone you are talking about. So I'm sure that that answers your question.

Katz        Well I think we need to keep the records open and discuss this. I don't know that I feel as comfortable, I think we need to discuss this further to make certain that what we are doing. We obviously are trying to do something to protect our citizens, but the question is, are we doing it in the best way that we can do it. So I think we need to have further discussion, but obviously the public hearing is going to remain open.

Edens        Is this your recommendation of how we should go?

Abrams      Well my recommendation is so that you don't run (inaudible) of what we call prior restraint of speech. That it be sought of relegated to an innocuous zone where there are properties available and you just delete it from consideration as a special exception. Prince George's County has

already been down that road, lost, and I don't see repeating the same here.

Katz We need to chat, but that is another day. Any more questions?

Levy I got two more things. One is in the definition of adult establishment. We don't include (inaudible) we do include those for tattoo parlors, body piercing establishments, wouldn't we want to restraint those from being close to a church or religious facility also. And then the saying that it could not be within a thousand feet of these types of uses like schools or libraries from the front door. I think if we are going to have a 1,000 foot zone it should be from the closes point of that establishment. Especially if they had a back door.

Katz A parking lot.

Levy Right. And then the last thing I have is on the amusement centers 12:00 midnight every night is how they could possibly run as I'm reading this. I'm just wondering during the week, are these going to attract mostly students, high school students (inaudible) school. Do we want it open that late during school nights?

Russel That's the maximum. I mean that is the latest.

Katz Or it could make it less. The question is whether or not if there is a no school night.

Levy Right, it could be this hour during the week and this hour....

Katz We could definitely give the Board of Appeals the flexibility to do this.

Russel This is just the maximum.

Levy Right. I'm just thinking. Does that mean that they can let it go until midnight?

Katz Yes. I would feel comfortable doing that. Any other questions?

Russel Mr. Levy had a number of questions about all of them, but I've just done T-351 technically.

Katz We are not going to hear from the public. If anybody would like to speak on, and then again, though we are in T-351, obviously we have mixed together T-351, T-352, and T-353, but they will also be public hearings right after this one. Anyone who would like to speak on a topic, we ask that you please keep your remarks to know more than three minutes. Any additional testimony that you might have can be submitted to the City and will be a part of the record just as your testimony would. Please state your name and address for the record. Do we have anyone in the audience who would like to testify? Please.

Preuninger My name is Chantal Preuninger, 4 Sanders Court in Gaithersburg. The first amendment to the constitution gives an American the right to speak freely and to worship as they please. It also provides for free press and for the right of people to gather for peaceful purposes and to present complaints to the government. But we also have the ninth amendment and that one tells us that a right cannot be taken away from a person simply because the constitution does not mention it. For those who claim to have the right to (inaudible) anything, anywhere according to that first amendment, I will respond that according to the ninth, we have the right to live with the mind free of degrading trash. We do not go to the grocery store to buy poison food. Let us not poison our minds or the minds of our children in the name of freedom. Pornography, access to videos, books, or else is dangerous. Pornography degrades sex and destroys families. It



is addictive and (inaudible) can be deadly for the victims. Any kind of violence maybe through videos or games or else can generate more violence and tragedies. Body piercing and tattooing can be symbols or statements of rebellion in teens, although some would argue that it's a kind of art. Considering that Gaithersburg has children to be CHARACTER COUNTS! City, it would be out of character to allow those businesses which would destroy instead of building character to take root inside of mixed developments. In the name of liberty that we treasure, let us choose to live with a mind free of trash. Let us regulate those things to prevent them from poisoning the minds of our children and families. Please make them the new regulations as difficult to access and do not make any provisions for exceptions. Thank you.

Katz            Thank you very much. Anyone else in the audience? Richard please.

Arkin           Richard Arkin, 121 Selby Street. I had some concerns with this ordinance. The ordinance tries to do a number of things which I believe are attempting to fix something that is not broken. I believe it is over broad and needs considerably more work before it can go forward. I think in part what we have here is a health ordinance in the guise of a zoning ordinance. And parts at least relating to tattoo parlors and body piercing establishments. And I'm not sure that is within the pervue of this Mayor and Council. I believe that the county acts as a Board of Health for this jurisdiction. I want to point out some minor problems in here. First, I think the definition of tattoo parlor is so broad that it could infringe on legitimate activities of plastic and cosmetic surgeons and also with some religious exercises. In some religions tattooing is part of their ritual. I think that has to be looked at. I think that the definition of body piercing establishment could also interfere with the operations of plastic and cosmetic surgeons and also the common and normal operations of jewelry stores. Most people who buy jewelry get their ears pierce at the jewelry store rather than by a practitioner. The definition of an amusement center, the

definition of, relating to adult activities and adult sales are simply slipping into a first amendment quagmire. And I think you could interfere in the legitimate operation of book stores and newsstands and also lingerie shops that could fit well within this definition. And the amusement center part of the ordinance seems too focused on a business which is no longer in business. A café, not even a café. An amusement center that builds itself as an internet café which doesn't really approximate what internet cafes are elsewhere in the world or even in this region. And the definition is so broad that I think it would apply as one of the speakers said earlier, to copy centers and business centers. I could go up to Kinkos and rent a computer, they have a bunch of computer there. I could rent a computer on which I can play games. And sometimes when I have been in the mist of a project that I have been working on with Kinkos, I've taken a half an hour off and played some games. I don't that is what you are trying to attack. I also don't think you are trying to attack a legitimate internet café which is pretty much like an ordinary coffee house or restaurant which also offers accessibility to email and internet services. So I would urge you to take a very, very hard look at this before moving forward. Thank you very much.

Katz And as Len did point out, there is a definition of change for ear piercing. Anybody else in the audience? What is the pleasure of the...

Levy Just one thing real quick that I thought of as the lady was speaking and that is that some of these establishments, adult establishments are required to sell that portion of their stock and trade in a close section. We are saying that it can't be visible from outside the establishment. But they could just (inaudible).

Katz I think that we need to have a work session on all three of these. But we are only dealing with the first one in general, obviously there has to be

some further discussion. But what is the pleasure of the Planning Commission?

Bauer Well I guess that staff has recommended that we hold our record open for two days, but maybe after this session tonight, we should hold it open indefinitely until we can get some direction from the Council.

Katz Absolutely.

Levy I move that the Planning Commission hold its record for T-351, T-352, and T-353...

Katz No, this is only for the first public hearing.

Levy Oh, alright. Hold the record open on T-351 indefinitely.

Bauer Is there a second?

Winborne Second.

Bauer Those in favor.

Commission Ayes (3-0)

Bauer Opposed? (inaudible).

Katz What is the pleasure of the Council?

Edens I move to hold our record open indefinitely on T-351.

Alster Second.

Katz All those in favor please say aye.

Council Ayes (5-0). Would you like to ask (inaudible).

Katz Thank you very much. Next is Jennifer Russel on T-352. And just as a note, for anyone who did testify, there was a mixing together of the three, but we will certainly look at all three at one time as well.

Russel This is a public hearing on T-352. The hearing has been duly advertised in the *Gaithersburg Gazette* on July 17 and 24, 2002. At the present time, there are five exhibits in the record file. These exhibits are referenced in the exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning office during regular business hours at City Hall. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. This once again is a companion ordinance to T-351 and this text amendment adds adult-oriented businesses as a use permitted by right in I-1 and the I-3 zones subject to certain conditions which are outlined in the text of the ordinance. Tattoo parlors and body piercing establishments are added as special exception the I-1 and I-3 zone. Once again, subjected to certain requirements which are outlined in the subsection of the ordinance. The uses are not currently addressed or defined in the zoning ordinance. This is an addition and of course the record is open to your discussion.

Katz Thank you very much. Is there any discussion for our staff? Thank you. Is there anyone in the audience who would like to speak on this topic? Richard please.

Arkin Very briefly, I assumed that everything that was said before is incorporated into the record for this hearing too.

Katz As I indicated, that is correct.

Arkin I think you are a bit closer to the mark regarding the zoning restriction on adult-oriented businesses provided you can tighten up the definitions. And I think you have to take a hard look at whether 9 a.m. to 9 p.m. hours given the context of normal business hours in this area are within the boundaries of reasonableness. And I think they would have to be if you are not essentially banning the operation of a particular entity. I have the same concerns about tattoo parlors and body piercing establishments and their relationship to existing legitimate businesses. And I don't think you would want to regulate cosmetic surgeons and jewelry stores who sell nose piercing or other body piercing jewelry simply to industrial zones. I'm not sure what is accomplished by that. Thank you.

Katz Thank you. Anyone else in the audience please? None appearing.

Bauer Well to be consistent with the last ordinance.

Levy I move that the Planning Commission hold their record open T-352 indefinitely.

Winborne Second.

Bauer Those in favor?

Commission Ayes (3-0)

Bauer Opposed? We are going to hold the record open on T-352 indefinitely.

Katz What is the pleasure of the Council please?

Somerset Move to hold the record open on T-352 indefinitely.

Alster. Second.

Katz It's been moved and seconded, all those in favor please say aye?

Council Ayes (5-0)

Katz Opposed? Carries unanimously as well. And the third public hearing please.

Russel This is a public hearing on T-353. The hearing has been advertised in the *Gaithersburg Gazette* on July 24 and 31, 2002. At the present time there are five exhibits in the record file. These exhibits are referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning and Code Administration office during regular business hours at City Hall. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise it will be deemed received in evidence. This text amendment of course is a companion housekeeping item, but it is a bit more general and it attempts to more finitely define when a use is permitted by right and by special exception throughout the zoning ordinance. This section of the zoning ordinance currently only applies to the R-6 zone. The revised language expands the explanation for permitted uses and special exception uses to the entire zoning ordinance and add the new section, once again applicable to the entire zoning ordinance which clarifies and makes clear of the fact that if a use isn't included in a zoning ordinance, it is not permitted in the City. Subsection number 3 is the new section and the other major change is that while this previously applied only to the R-6 zone, it spans the entire zoning ordinance now.

Katz Ok. Thank you very much. Any questions for our staff? Thank you Jennifer. Is there anyone in the audience that would like to, Mr. Arkin.

Arkin        Thank Mr. Chairman. Again, Richard Arkin, 121 Selby Street. This is more in the nature of questions. And I really had two questions and one is that it seems to me that saying the only uses permitted that are listed in the zoning ordinance are permitted uses in the City of Gaithersburg. It's the reverse of the way things are normally done in America juris prudence. Usually, anything which is lawful which is not prohibited is permitted. So that by saying that anything else other than what is listed is prohibited seems to me to cut back innovation and to cut back opportunities for people to engage in occupations would be otherwise lawful and (inaudible) up until tonight. And then I think you have created quite a large loophole here in the last sentence of item, section 24-22 (a) (3). And that is saying that lawful accessory uses and lawful nonconforming uses are not prohibited uses. It seems to me that there is a loophole large enough to drive a truck through. So I again would ask you to take a hard look at it. Thank you.

Katz        Thank you. Anyone else in the audience please? None appearing. What is the pleasure of the Planning Commission?

Bauer       Round three that the Planning Commission hold their record open indefinitely.

Levy        I move that the Planning Commission hold their record open T-353 indefinitely.

Winborne   Second.

Bauer       All those in favor?

Commission Ayes (3-0)

Bauer        Opposed? It is held open indefinitely.

Katz         Thank you and what is the pleasure of the Council please?

Schlichting   Mr. Mayor I move that we hold our record open on T-353 indefinitely.

Alster        Seconded.

Katz         It's been moved and seconded, all those in favor please say aye?

Council       Ayes (5-0)

Katz         Opposed? Carries unanimously.

Bauer        We have those three on our agenda for Wednesday night.

Russel        It will be off.

Bauer        I understand that. I wondered if we should just establish that tonight?

Russel        It will be off.

Katz         Well it is established tonight. I guess the question is, do we have any idea off the top of anybodies head when this will come back for work session?

Felton        No we will get it scheduled as soon as possible and get notices out.

Katz         Ok. Thank you very much.

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END OF JOINT PUBLIC HEARINGS  
T-351, T-352, T353